

Exhibit 5

*State of California ex. rel. Ven-A-Care of the Florida Keys, Inc. v.
Abbott Laboratories, Inc., et al.*

Exhibit to the Declaration of Steven U. Ross in Support of
Plaintiffs' Opposition to Sandoz, Inc.'s Motion for Summary Judgment

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE)

LITIGATION)

_____)

THIS DOCUMENT RELATES TO) MDL No. 1456

State of California, ex rel.) Civil Action:

Ven-A-Care v. Abbott) 01-12258-PBS

Laboratories, Inc., et al.)

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VOL. II

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MONDAY, SEPTEMBER 22, 2008

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VIDEOTAPED DEPOSITION OF

J. KEVIN GOROSPE, Pharm.D.

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Reported By: CAROL NYGARD DROBNY, CSR No. 4018

Registered Merit Reporter

1 variety of products including inhalation therapy
2 products.

3 Q. Do you understand it to be a primarily
4 generics manufacturer?

5 A. Yes, I guess so.

6 Q. Have you ever heard of Mylan?

7 A. Yes.

8 Q. What's your understanding of what Mylan
9 is?

10 A. Very similar to Dey.

11 Q. Okay. Have you ever had any discussion
12 with a person at Dey?

13 A. Not that I can recall.

14 Q. Okay. Same question for Mylan, have you
15 ever had any discussions with somebody from Mylan?

16 A. Yes.

17 Q. Who did you --

18 Well, let me ask you what -- how many
19 discussions have you had?

20 A. One that I can recall.

21 Q. Okay. Do you remember when it was?

22 A. May of 2007.

1 Q. May of 2007?

2 A. Yes.

3 Q. Okay. Do you remember who you spoke to?

4 A. No, I do not.

5 Q. Do you remember what the -- do you
6 remember if it was a man or a woman?

7 A. I don't recall.

8 Q. Do you remember what the subject matter
9 of the conversation was?

10 A. Yes.

11 Q. What was it?

12 A. At the time the -- in front of the
13 Legislature -- or the Legislature had on --
14 Excuse me.

15 The Governor had proposed a change in
16 reimbursement related to the pharmacy program to
17 move to AMP based reimbursement both for brand name
18 products and multi-source products by setting MAIC
19 based on AMP.

20 Q. And do you remember -- did the person
21 from Mylan initiate the call with you or did you
22 call them?

1 A. They initiated the call.

2 Q. Okay. Was this a telephone call?

3 A. Face-to-face meeting.

4 Q. Face-to-face meeting.

5 Where was it?

6 A. At the Department of Health Services
7 offices.

8 Q. So it was here in Sacramento?

9 A. Yes.

10 Q. Okay. Was it a Mylan -- do you know if
11 it was a Mylan employee?

12 A. Yes.

13 Q. Okay. What did they say to you?

14 A. In general they presented to me a
15 discussion about the use of AMP as reported to CMS
16 as not necessarily being the most appropriate
17 vehicle to reimburse pharmacies at.

18 Q. Do you remember what -- why they said it
19 wasn't the most appropriate?

20 A. I can't remember the specific language.

21 It had to do with a document that -- or a

22 -- I don't know if it was a document, but a

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1 discussion related to the Generic Pharmaceutical
2 Manufacturers Association, I think that's what
3 they're called, that had put some language or some
4 -- a report out that said that AMP as reported to
5 CMS wouldn't be appropriate for use for
6 reimbursement because of a variety of reasons, one
7 of which was confidentiality.

8 Q. Did they give you a copy of that -- of
9 that report, of that document?

10 A. Yes, I believe they did. Yes.

11 Q. Do you keep -- did you keep it?
12 Do you still have it?

13 A. Yes.

14 Q. Okay. What did you say to the -- to the
15 Mylan person?

16 A. I thanked them for bringing their
17 technical information forward and that we would
18 pass it along to the Legislature with our analysis
19 of it.

20 Q. And did you do that?

21 A. Yes.

22 Q. How long did the conversation last?

1 asked you some questions about AMP, and I believe
2 you said in sum or substance that AMP would have
3 been of interest to you in your role with the
4 Medi-Cal agency.

5 I'm paraphrasing, but do you remember
6 that testimony?

7 A. Yes.

8 Q. Okay. Why would it have been of
9 interest to you?

10 A. Well, I asked clarification.

11 During the time of the nineties or when
12 she said any time, and subsequent, as I previously
13 described, the statutes changed for reimbursement
14 to be based on AMP, and, therefore, I would be
15 interested in those numbers based on that statutory
16 change.

17 Q. Okay. Would you have been interested in
18 it prior to that statutory change?

19 A. Only in the context of rebates.

20 Q. Okay. Now, I think you testified that
21 AMP is a number that because of the definition is
22 closer, in fact, significantly closer, to actual

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1 BY MR. PAUL:

2 Q. For the record I'm Nicholas Paul with
3 the California Department of Justice representing
4 the Medi-Cal program here in California in this
5 case and representing Mr. Gorospe in this
6 deposition.

7 Mr. Gorospe, counsel for Mylan and Dey,
8 Mr. Robben, asked you some questions at the
9 beginning of his time with you regarding a meeting
10 -- a discussion that you had with Mylan, his
11 client, in May 2007, I believe.

12 Do you recall the testimony?

13 A. Yes.

14 Q. And you provided responses to his
15 questions?

16 A. Yes.

17 Q. And if I recollect correctly, the
18 discussion with the Mylan representative included
19 discussion of AMPs; is that correct?

20 A. Yes.

21 Q. And the Mylan representative described
22 AMPs to you as a poor basis for reimbursement

1 because they were unreliable; is that correct?

2 MR. ROBBEN: Objection.

3 BY MR. PAUL:

4 Q. Is that correct?

5 A. Yes.

6 Q. Do you recall -- did the Mylan
7 representative explain to you why he or she
8 believed that Mylan's AMP were unreliable?

9 A. Yes, but I don't recall the content.

10 Q. So you don't remember the reason for
11 their unreliability?

12 A. Just -- I don't recall the specifics of
13 the conversation.

14 Q. And I believe the representative also
15 expressed concern about using AMPs for
16 reimbursement because of the confidentiality of
17 AMP; is that correct?

18 A. Yes.

19 Q. Do you recall what the representative
20 stated to you regarding the confidentiality of
21 Mylan AMPs, any details?

22 A. No, I don't recall the details.

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1 Q. Do you have an understanding of the
2 magnitude -- difference between actual acquisition
3 costs and AWP's for the drugs that are in the
4 California Complaint?

5 MR. BENNETT: Objection to form.

6 THE WITNESS: No, I don't.

7 BY MR. PAUL:

8 Q. At any time in your career at DHCS have
9 you ever received any communication of any sort
10 from Mylan explaining the differences between the
11 AWP's it reports and providers' actual acquisition
12 costs?

13 A. Not that I can recall.

14 Q. At any time in your career at DHCS have
15 you ever received any communication of any sort
16 from Sandoz explaining the differences between the
17 actual acquisition costs for its drugs and Sandoz's
18 reported AWP's?

19 A. Not that I can recall.

20 Q. I won't restate the question each time,
21 but the same question regarding Dey
22 Pharmaceuticals?